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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,644	03/25/2004	Timothy J. Magnuson	MAGN-26,326	6117
25883	7590	02/19/2009		
HOWISON & ARNOTT, L.L.P. P.O. BOX 741715 DALLAS, TX 75374-1715			EXAMINER RAJAN, KAI	
			ART UNIT 3769	PAPER NUMBER
			NOTIFICATION DATE 02/19/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@dalpat.com

Office Action Summary

Application No.

10/808,644

Applicant(s)

MAGNUSON ET AL.

Examiner

KAI RAJAN

Art Unit

3769

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 3,9 and 16-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,10-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Examiner acknowledges the response filed December 1, 2008.

Claim Rejections - 35 USC § 101

Claims 1, 2, 4 – 8, and 10 – 15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In particular, claims 1, 2, 6 – 8 and 10 – 15 are drawn to a process. Under 35 U.S.C. §101 a process must 1) be tied to another statutory class (such as a particular apparatus) or 2) transform underlying subject matter (such as an article or materials) to a different state or thing. The claimed process steps do not transform underlying subject matter. Thus, to qualify as a 35 U.S.C. § 101 statutory process, the claims should positively recite the other statutory class (apparatus or thing) to which it is tied, for example by identifying the apparatus that accomplishes the method steps.

Furthermore, claims 1, 2, 4 – 8, and 10 – 15 are rejected under 35 U.S.C. 101 because there is no tangible result of the method steps within the claims. In particular, there is no physical transformation of matter, and no step of outputting information or a result.

The Applicant is invited to explain, to make the record clear, reasons that the rejection under 35 U.S.C. 101 does not apply.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the Examiner could not find support within the written disclosure for sensed measured physiologic parameters and determined perceived physiologic parameters "determined temporally proximate to each other".

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 4 – 8 and 10 – 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the written disclosure provides no explanation or detail for the term "parameters of physiologic metabolism." The term renders the claims indefinite since it is unclear as to what the applicant claims as the invention regarding measured parameters. The Applicant is invited to cite a definition within the written disclosure for "parameters of physiologic metabolism."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 5, and 12 – 15 are rejected under 35 U.S.C. 102(e) as being anticipated by Nihtila U.S. PGPub No. 2004/0002634.

1. A method for monitoring the wellness state of a given human body of a person, comprising the steps of:

sensing measurable physiologic parameters of the physiologic metabolism of the given human body (Paragraph 0029);

determining perceived physiologic parameters of the physiologic metabolism of the given human body through interface with the human brain associated with the given human body, which perceived physiologic parameters are parameters relating to the physiologic metabolism of the given human body that can only be determined by interface of the human brain with the physiologic metabolism of the associated given human body (Paragraph 0030);

wherein the sensed measured physiologic parameters and the determined perceived physiologic parameters comprise an input vector (Paragraphs 0029 – 0031); and

processing the input vector through a model of the given human body that is trained on a training data set comprised of historical measured physiologic parameters of the physiologic metabolism of the given human body that are sensed over time in conjunction with historical perceived physiologic parameters of the physiologic metabolism of the given human body, wherein the input vector comprises less than the set of historical measured physiologic parameters and the set of historical perceived physiologic parameters, the output of the model providing a prediction of wellness of the given human body (Paragraphs 0029 – 0033).

2. The method of Claim 1, wherein the ratio of measured physiologic parameters in the input vector to the historical measured physiologic parameters is substantially greater than the ratio of the perceived physiologic parameters in the input vector to the historical perceived physiologic parameters (Paragraphs 0029 – 0033).

4. The method of Claim 1, wherein the interface to the human brain comprises a tactile interface (Paragraphs 0040, 0047, 0070).

5. The method of Claim 4, wherein the tactile interface comprises a written interface (Paragraphs 0040, 0047, 0070).

12. The method of Claim 1, wherein the measured physiologic parameters are selected from the group of blood pressure, body temperature, pulse, blood chemistry, pedometer count, and urine chemistry (Paragraphs 0029 – 0033).

13. The method of Claim 1, wherein the historical perceived physiologic parameters are collected by the steps of recording perceived parameters of the wellness of the given human body by the associated brain and recording such perceptions (Paragraphs 0029 – 0033).

14. The method of Claim 13, wherein the step of recording comprises responding to predetermined queries at predetermined times over a set time span (Paragraphs 0029 – 0033).

15. The method of Claim 1, wherein the model comprises a representation of the physiological metabolism of the given human body combined with the inherent learned behavior of the associated brain when making perceptions of the physiological metabolism of the given human body (Paragraphs 0029 – 0033).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6 – 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nihtila U.S. PGPub No. 2004/0002634 in view of Kaylor et al. U.S. PGPub No. 2004/0078219.

In regard to claims 6 – 8, Nihtila discloses a system and method for evaluating the physical condition and health of an individual by processing sensed parameters. Nihtila fails to disclose measuring and processing environmental parameters. However Kaylor et al. a reference in an analogous health care art discloses measuring pollen content, humidity, and air temperature (Kaylor et al. paragraph 0231). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the sensed parameters of Nihtila to include the environmental parameters of Kaylor et al., since Kaylor et al. states that healthcare can be enhanced by monitoring and controlling the quality of the environment of the individual (Kaylor et al. paragraph 0231).

In regard to claims 10 and 11, Nihtila fails to explicitly disclose processing data using neural networks. However, Kaylor et al. a reference in an analogous health care art discloses using neural networks to process measured physiological data to produce mathematical models of an individual's health (Kaylor et al. paragraph 0038). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Nihtila with the neural networks of Kaylor et al., since Kaylor et al. states that neural networks provide improved results and levels of predictability, and neural networks are well known in the art for processing larger quantities of raw data (Kaylor et al. paragraph 0038).

Response to Arguments

Applicant's arguments have been fully considered. While the Examiner neither agrees nor disagrees with Applicant's remarks regarding the previously applied art, a new non-final

rejection is issued herein to address rejections under 35 USC 101 and 35 USC 112. The claims have been rejected under a new grounds of rejection, presented above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAI RAJAN whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kai Rajan/
Examiner, Art Unit 3769

/Michael C. Astorino/
Primary Examiner, Art Unit 3769

February 16, 2009